

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MATY SENE,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 04-1331 JJF
)	
MBNA AMERICA, INC.,)	
)	
Defendant.)	

**MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF
IN RESPONSE TO PLAINTIFF'S FAILURE TO COMPLY WITH FED.R.CIV.P. 4(m)**

Defendant MBNA America, Inc. hereby moves, pursuant to Local Rule 7.1.2(c), for leave to submit an eight-page supplemental brief in support of its motion to dismiss the complaint and states as follows:

1. Defendant requests to submit the supplemental brief because following the completion of briefing by the parties on its motion to dismiss the 120 day time period under Fed. R. Civ. P. 4(m) expired without Plaintiff effecting service of process.

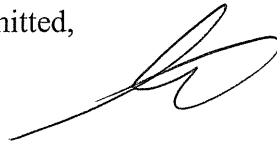
2. Rule 4(m) specifically provides that "[I]f service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action . . . or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period." Fed.R.Civ.P. 4(m).

3. In the instant case, Plaintiff commenced this action on October 5, 2004 and had until February 3, 2005 to effect service under Rule 4(m). However, Plaintiff did not attempt to serve Defendant with a valid summons until February 8, 2005, one hundred twenty five (125) days after the Complaint was filed.

4. As set forth more fully in Defendant's supplemental brief, Plaintiff's failure to effect service of process within the time prescribed under Rule 4(m) warrants dismissal of this case. Plaintiff cannot show good cause why service of the Summons and Complaint was not accomplished within 120 days, and numerous factors weigh against this Court's exercise of discretion to extend the time to effect service.

WHEREFORE, Defendant respectfully requests that this Court grant its motion to file the eight-page supplemental brief submitted herewith.

Respectfully submitted,



Scott A. Holt (Del. No. 3399)
YOUNG, CONAWAY, STARGATT & TAYLOR, LLP
The Brandywine Building
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, DE 19899-0391
(302) 571-6623
sholt@ycst.com
Attorneys for Defendant

DATED: March 8, 2005

CERTIFICATE OF SERVICE

I hereby certify that on **March 8, 2005**, I electronically filed a true and correct copy of **Motion For Leave To File Supplemental Brief In Response To Plaintiff's Failure To Comply With Fed. R. Civ. P. 4(m)** and **Order** with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

Tshaka H. Lafayette, Esquire
Lafayette Chisholm Talmadege & Jackson, P.C.
The Stephen Girard Building
21 South 12th Street
Suite 1050
Philadelphia, PA 19107

Kester I. H. Crosse, Esquire
Williams & Crosse
1214 King Street, Suite 300
Wilmington, DE 19801

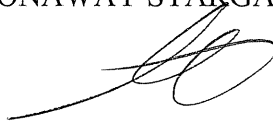
I further certify that on March 8, I caused a copy of **Motion For Leave To File Supplemental Brief In Response To Plaintiff's Failure To Comply With Fed. R. Civ. P. 4(m)** and **Order** to be served on the following counsel of record:

Tshaka H. Lafayette, Esquire
Lafayette Chisholm Talmadege & Jackson, P.C.
The Stephen Girard Building
21 South 12th Street - Suite 1050
Philadelphia, PA 19107

Kester I. H. Crosse, Esquire
Williams & Crosse
1214 King Street, Suite 300
Wilmington, DE 19801

BY UNITED STATES FIRST CLASS MAIL BY HAND DELIVERY

YOUNG CONAWAY STARGATT & TAYLOR, LLP



Scott A. Holt, Esquire (Del. No. 3399)
The Brandywine Building
1000 West Street, 17th Floor, P.O. Box 391
Wilmington, Delaware 19899-0391
(302) 571-6623
sholt@ycst.com
Attorneys for Defendant

DATED: March 8, 2005